

EXHIBIT 43

FOX MX - FUEL

Defendant's
Exhibit
78

PLTF0085870

CONSENT AGREEMENT

THIS CONSENT AGREEMENT ("AGREEMENT") is made and effective as of November 24, 2010, by and between FUEL CLOTHING CO., INC. ("FUEL CLOTHING"), a corporation of South Carolina having a place of business at 31 New Orleans Road, Hilton Head, SC 29928, and FUEL HELMETS, INC., a Tennessee Corporation having a place of business at 122 Gayoso, Memphis Tennessee 38103.

RECITALS

WHEREAS, FUEL CLOTHING is the owner of United States Trademark Registration 2,290,931 covering the trademark FUEL for "clothing, namely coats, hats, shirts, skirts, dresses, swim wear, sweaters, T-shirts, tank tops, socks, belts and pants", in international class 25, and FUEL CLOTHING also claims common law trademark rights in the trademark FUEL as well;

WHEREAS, FUEL HELMETS, INC is the owner of United States Trademark Registration 3,298,865 covering the trademark FUEL for Motorcycle Helmets in International Class 09 and Fuel Helmets also claims common law trademark rights in the trademark FUEL as well; and

WHEREAS, FUEL CLOTHING has notified FUEL HELMETS, INC. that advertising and sale of products under the trademark FUEL was considered to be an infringement of FUEL CLOTHING's trademark rights, as well as unfair competition, false designation of origin and trademark dilution;

WHEREAS, Fuel Helmets denies that its sale of Motorcycle Helmets and related products constitutes an infringement of FUEL CLOTHING's trademark rights, as well as unfair competition, false designation of origin and trademark dilution; and

WHEREAS, the parties have determined, and mutually agree, that a Consent Agreement, including terms designed to avoid confusion in the marketplace, will satisfactorily resolve their disagreement;

NOW THEREFORE, in consideration of the mutual covenants and undertakings expressed herein, and for other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the parties to this CONSENT AGREEMENT hereby agree as follows:

1. Recitals and headings:

The foregoing Recitals are hereby incorporated into and made a part of this

CONSENT AGREEMENT. The headings in this CONSENT AGREEMENT are for convenience only and are not to be taken into account in its interpretation.

2. Definitions:

The term "helmet" means any protective, semi-protective, or pseudo-protective headgear or other articles of headwear or apparel to be worn on the head.

The term "word 'fuel'" includes the exact word "fuel", corrupted spellings thereof, homonyms thereof, and other words that, because of sound or spelling, are likely to be confused with "fuel".

The terms "glove" and "gloves" include the exact word "glove" and "gloves", and pluralizations, and mean any coverings or apparel to be worn on the hands.

The term "special style" includes type fonts other than plain block letters with or without serifs, colors other than black or white, and designs integrated with the word "fuel."

The term "actual confusion" refers to an instance in which a third party genuinely but mistakenly believes that one party's product is manufactured, sold, or sponsored by, the other party, and enters into a purchase, or refrains from a purchase, because of such mistaken belief.

3. Limitations on use:

FUEL HELMETS, INC. will not, at any time after the effective date of this CONSENT AGREEMENT, use the mark FUEL or any mark containing the word "fuel" as a component thereof, in connection with the advertising or sale of clothing, helmets for off-road use, namely; MX helmets, motocross helmets, motorcycle gloves, MX gloves, or motocross gloves, or in connection with the advertising or sale of any such goods, except as follows: (1) FUEL HELMETS, INC. may continue to sell existing product until it has exhausted current inventory and that inventory which is already ordered and non-cancellable. No new orders will be taken or filled by FUEL HELMETS, INC. for helmets for off-road use, namely; MX helmets, motocross helmets, motorcycle gloves, MX gloves, or motocross gloves after the effective date hereof and (2) FUEL HELMETS, INC. may continue to use the mark FUEL or any mark containing the word "fuel" as a component thereof, in connection with the advertising or sale of safety helmets motorcycle gloves and related products for over the road motorcycle use.

4. Agreement to Allow and Consent to Certain Uses:

FUEL CLOTHING agrees to allow and consents to FUEL HELMETS, INC. continued sale of road use motorcycle helmets and gloves under the FUEL trademark,

and to treat such use as an exclusive license for use with road use motorcycle helmets and gloves in conjunction with FUEL HELMETS, INC.'s mark. FUEL CLOTHING agrees not object to FUEL HELMETS, INC.'s reasonable uses of the trademark FUEL for goods and services beyond those in FUEL CLOTHING's Federal Registrations.

5. Mutual Releases:

FUEL CLOTHING hereby releases FUEL HELMETS, INC. from all claims whether known or unknown and for any period of time up to the date of this agreement based on FUEL CLOTHING's FUEL trademark rights, including claims of infringement, claims of unfair competition, claims of false designation of origin, and claims of trademark dilution.

FUEL HELMETS, INC. hereby releases FUEL CLOTHING from all claims whether known or unknown and for any period of time up to the date of this agreement.

6. Covenants not to sue:

FUEL CLOTHING covenants not to sue FUEL HELMETS, INC. on the basis of FUEL CLOTHING's FUEL trademark rights as long as FUEL HELMETS, INC. adheres to the requirements of this agreement.

7. Actual confusion:

Each party may notify the other of any instances of actual confusion. When any such notice is given, the parties will investigate the relevant facts, determine whether or not similar instances are likely to occur in the future, and endeavor to take appropriate steps to avoid actual confusion in the future. Each party agrees to provide full and accurate responses to any inquiries concerning origination of a product offered for sale under the FUEL trademark, or concerning affiliation of one party hereto with the other.

8. Monetary payments:

FUEL HELMETS, INC. agrees, in consideration of the promises and agreements herein, to pay to FUEL CLOTHING the total sum of (\$31,500.00 USD) Thirty-one thousand, five hundred Dollars. One third of the total sum, or \$10,500.00, shall be paid on or before December 20, 2010. The remaining payments, or \$21,000.00 are due and shall be paid on or before January 20, 2011. Payments shall be delivered to counsel for FUEL CLOTHING.

9. No Waiver:

The express waiver by either party of any provision, condition or requirement of

this CONSENT AGREEMENT shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement. Any delay or omission by either party to exercise any right or remedy under this CONSENT AGREEMENT shall not be construed to be a waiver of any such right or remedy or any other right or remedy hereunder. All the rights of each party under this CONSENT AGREEMENT shall be cumulative and may be exercised separately or concurrently.

10. Termination:

This CONSENT AGREEMENT shall remain in effect until the parties mutually agree in writing to its termination, or until a party's FUEL trademark is abandoned. Discontinuance of the use of a party's FUEL trademark with no intent to resume its use shall constitute abandonment. Three consecutive years of non-use of a party's FUEL trademark shall be considered abandonment.

11. Successors and assigns:

The rights and obligations of the parties to this CONSENT AGREEMENT shall respectively inure to benefit of, and be binding on, their successors and assigns.

12. North America effect:

Unless otherwise expressly indicated, the obligations imposed by this CONSENT AGREEMENT, and the releases given herein, are applicable in North America.

13. Governing Law:

This CONSENT AGREEMENT, including its validity and interpretation, shall be governed by United States law and the laws of the State of South Carolina, and the parties agree that the only proper venue for enforcement of any breach of this CONSENT AGREEMENT shall be the United States District Court for the District of South Carolina, Columbia Division.

14. Notices:

All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person, (b) one weekday after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three weekdays after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To FUEL CLOTHING

Fuel Clothing Co., Inc.

31 New Orleans Road,
Hilton Head, SC 29928

With a copy to:

John E. Schmidt, III Esq.
Schmidt & Copeland LLC
P. O. Box 11547
Columbia, SC 29211

To FUEL HELMETS, INC

Fuel Helmets, Inc.
122 Gayoso
Memphis, Tennessee 38103

With a copy to:

H. Roy Berkenstock
Wyatt, Tarrant & Combs, LLP
1715 Aaron Brenner Drive, Suite 800
Memphis, Tennessee 38120-4367

or addressed as such party may from time to time designate by written notice to the other party. Either party by notice to the other may designate additional or different addresses for subsequent notices of communications.

15. Sole Agreement:

This CONSENT AGREEMENT supersedes and abrogates all former oral or written agreements or understandings between the parties hereto and is the only agreement in existence between the parties. It is not subject to change, amendment or modification except by mutual agreement, in writing, signed by both FUEL CLOTHING and FUEL HELMETS, INC.

16. Counterparts:

This CONSENT AGREEMENT may be signed in one or more counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF the undersigned have executed this CONSENT AGREEMENT as of the Effective Date hereof.

FUEL CLOTHING CO., INC.

By: 

Shane Gould
President

FUEL HELMETS, INC.

By: 

Arthur Fulmer, III
President

 12-13-10